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Attorneys for Defendant,
CITY OF SAN BERNARDINO, a public entity

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE ALVARADO, JIMENA
ALVARADO, ERIKA ALVARADO,
and MARCUS ALVARADO, in each
case individually and as successor in
interest to Delfino Avila, deceased,

Plaintiffs,

vs.

CITY OF SAN BERNARDINO and
DOES 1-10, inclusive.

Defendants.

Case No.: 5:24-cv-00088-JGB-SHK

**STIPULATION RE: PROTECTIVE
ORDER**

**[DISCOVERY DOCUMENT;
REFERRED TO MAGISTRATE
JUDGE]**

Plaintiffs, JOSE ALVARADO, JIMENA ALVARADO, ERIKA
ALVARADO, and MARCUS ALVARADO, on the one hand, and Defendant
CITY OF SAN BERNARDINO, on the other, by and through their respective
counsel, hereby stipulate and agree as follows:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential,
proprietary or private information for which special protection from public
disclosure and from use for any purpose other than prosecuting this litigation may

1 be warranted.

2 Accordingly, the parties hereby stipulate to and petition the Court to enter
3 the following Stipulated Protective Order. The parties acknowledge that this Order
4 does not confer blanket protections on all disclosures or responses to discovery and
5 that the protection it affords from public disclosure and use extends only to the
6 limited information or items that are entitled to confidential treatment under the
7 applicable legal principles.

8 The parties further acknowledge, as set forth in Section 12.3, below, that this
9 Stipulated Protective Order does not automatically entitle them to file confidential
10 information under seal and that Local Civil Rule 79-5 sets forth the procedures that
11 must be followed and the standards that will be applied when a party seeks
12 permission from the Court to file material under seal. The parties agree that this
13 protective order does not waive the parties' rights to object to discovery demands
14 or requests for documents and/or information.

15 **B. GOOD CAUSE STATEMENT**

16 This litigation relates to the November 3, 2022 shooting death of Delfino
17 Avila by a City of San Bernardino Police Department police officer. The relevant
18 evidence in this case includes, but is not limited to, body-worn camera footage,
19 police reports, witness statements, and information about individuals who are not
20 parties to this litigation. The evidence in this action may also involve confidential
21 law enforcement investigative files and records. The evidence in this action also
22 may involve private medical and/or psychological records related to plaintiffs and
23 decedent.

24 The Parties submit that good cause exists to enter the proposed protective
25 order to balance the parties' concerns that the documents consist of confidential
26 and private information concerning the parties to this litigation, which is protected
27 by, among other things, the right to privacy, the official information privilege, law
28 enforcement privilege, and as protected by the California and United States
Constitution.

1 Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately
3 protect information the parties are entitled to keep confidential, to ensure that the
4 parties are permitted reasonable necessary uses of such material in preparation for
5 and in the conduct of trial, to address their handling at the end of the litigation, and
6 serve the ends of justice, a protective order for such information is justified in this
7 matter. It is the intent of the Parties that information will not be designated as
8 confidential for tactical reasons and that nothing be so designated without a good
9 faith belief that it has been maintained in a confidential, non-public manner, and
10 there is good cause why it should not be part of the public record of this case.

11 **2. DEFINITIONS**

12 **2.1 Action:** Jose Alvarado, et al. v. City of San Bernardino, et al. 5:24-cv-
13 00088-JGB-SHK.

14 **2.2 Challenging Party:** A Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 **2.3 “CONFIDENTIAL” Information or Items:** Information (regardless
17 of how it is generated, stored or maintained) or tangible things that a Designating
18 Party believes is entitled to confidential treatment under Federal Rule of Civil
19 Procedure 26(c), and as specified above in the Purposes and Good Cause
20 Statements. This also includes (1) any information copied or extracted from the
21 Confidential information; (2) all copies, excerpts, summaries, abstracts or
22 compilations of Confidential information; and (3) any testimony, conversations, or
23 presentations that might reveal Confidential information.

24 **2.4 Counsel:** Counsel of record and House Counsel for the parties to this
25 civil litigation and their support staff.

26 **2.5 Designating Party:** A Party or Non-Party that designates information
27 or items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: All items or information,

1 regardless of the medium or manner in which it is generated, stored, or maintained
2 (including, among other things, testimony, transcripts, and tangible things), that are
3 produced or generated in disclosures or responses to discovery in this matter.

4 **2.7 Expert:** A person with specialized knowledge or experience in a
5 matter pertinent to the litigation who has been retained by a Party or its counsel to
6 serve as an expert witness or as a consultant in this Action.

7 **2.8 Final Disposition:** When this Action has been fully and completely
8 terminated by way of settlement, dismissal, trial and/or appeal.

9 **2.9 House Counsel:** Attorneys other than Counsel (as defined in
10 paragraph 2.4) and who are employees of a party to this Action.

11 **2.10 Non-Party:** Any natural person, partnership, corporation, association
12 or other legal entity not named as a Party to this action.

13 **2.11 Outside Counsel of Record:** Attorneys who are not employees of a
14 party to this Action but are retained to represent or advise a party to this Action
15 and have appeared in this Action on behalf of that party or are affiliated with a law
16 firm that has appeared on behalf of that party, and includes support staff.

17 **2.12 Party:** Any party to this Action, including all of its officers, directors,
18 boards, departments, divisions, employees, consultants, retained experts, and
19 Outside Counsel of Record (and their support staffs).

20 **2.13 Producing Party:** A Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 **2.14 Professional Vendors:** Persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
and their employees and subcontractors.

25 **2.15 Protected Material:** Any Disclosure or Discovery Material that is
26 designated as "CONFIDENTIAL."

27 **2.16 Receiving Party:** A Party that receives Disclosure or Discovery
28 Material from a Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, abstracts, summaries, or
5 compilations of Protected Material; and (3) any deposition testimony,
6 conversations, or presentations by Parties or their Counsel that might reveal
7 Protected Material. However, if the receiving party has the Protected Material
8 from a source other than the Producing Party, that independently obtained
9 information is not subject to this Order unless it was marked confidential and
10 subject to a Protective Order itself.

11 Any use of Protected Material at trial shall be governed by the orders of the
12 trial judge. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION**

14 Once a trial commences in this Action, information that was designated as
15 CONFIDENTIAL or maintained pursuant to this protective order and that is
16 introduced or admitted as an exhibit at trial becomes public and will be
17 presumptively available to all members of the public, including the press, unless
18 compelling reasons supported by specific factual findings to proceed otherwise are
19 made to the trial judge in advance of the trial. See *Kamakana v. City and County of*
20 *Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
21 showing for sealing documents produced in discovery from “compelling reasons”
22 standard when merits-related documents are part of court record). Accordingly, the
23 terms of this protective order do not extend beyond the commencement of the trial
24 as to the CONFIDENTIAL information and materials introduced or admitted as an
25 exhibit at trial.

26 **5. DESIGNATING PROTECTED MATERIAL**

27 **5.1 Exercise of Restraint and Care in Designating Material for**
28 **Protection.**

1 Each Party or Non-Party that designates information or items for protection
2 under this Order must take care to limit any such designation to specific material
3 that qualifies under the appropriate standards. The Designating Party must
4 designate for protection only those parts of material, documents, items or oral or
5 written communications that qualify so that other portions of the material,
6 documents, items or communications for which protection is not warranted are not
7 swept unjustifiably within the ambit of this Order.

8 Mass, indiscriminate or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified or that have been made for an improper
10 purpose (e.g., to unnecessarily encumber the case development process or to
11 impose unnecessary delay, expenses and/or burdens on other parties) may expose
12 the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it
14 designated for protection do not qualify for protection, that Designating Party must
15 promptly notify all other Parties that it is withdrawing the inapplicable designation.

16 **5.2 Manner and Timing of Designations.** Except as otherwise
17 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
18 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
19 protection under this Order must be clearly so designated before the material is
20 disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), that the Producing Party affix at a minimum, the legend
25 "CONFIDENTIAL" or words of a similar effect, and that includes the case name
26 and case number (hereinafter "CONFIDENTIAL legend"), to each page that
27 contains protected material. If only a portion of the material on a page qualifies for
28 protection, the Producing Party also must clearly identify the protected portion(s)
(e.g., by making appropriate markings in the margins). The marking of a

1 document as CONFIDENTIAL may not obscure or obliterate any part of the
2 document so marked.

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed "CONFIDENTIAL." After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine
9 which documents, or portions thereof, qualify for protection under this Order.
10 Then, before producing the specified documents, the Producing Party must affix
11 the "CONFIDENTIAL legend" to each page that contains Protected Material. If
12 only a portion of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making
14 appropriate markings in the margins without obscuring the document so marked.)

15 (b) for testimony given in depositions that the Designating Party identifies
16 the Disclosure or Discovery Material on the record, before the close of the
17 deposition all protected testimony.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information is stored the legend
21 "CONFIDENTIAL." If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall identify the
23 protected portion(s).

24 **5.3 Inadvertent Failures to Designate.** If timely corrected, an
25 inadvertent failure to designate qualified information or items does not, standing
26 alone, waive the Designating Party's right to secure protection under this Order for
27 such material. Upon timely correction of an inadvertent failure to designate, the
28 Receiving Party must make reasonable efforts to assure that the material is treated
in accordance with the provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7 **6.3** The burden of persuasion in any such challenge proceeding shall be
8 on the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 **7.1 Basic Principles.** A Receiving Party may use Protected Material that
17 is disclosed or produced by another Party or by a Non-Party in connection with
18 this Action only for prosecuting, defending or attempting to settle this Action.
19 Such Protected Material may be disclosed only to the categories of persons and
20 under the conditions described in this Order. When the Action has been
21 terminated, a Receiving Party must comply with the provisions of section 13 below
(FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

25 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated
28 "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Counsel of Record in this Action, as well as
2 employees of said Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this Action, the parties;

4 (b) the officers, directors, and employees (including House Counsel) of
5 the Receiving Party to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this Action and who have signed the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel.

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in the
17 Action to whom disclosure is reasonably necessary provided: (1) the deposing
18 party requests that the witness sign the form attached as Exhibit "A" hereto; and
19 (2) they will not be permitted to keep any confidential information unless they sign
20 the "Acknowledgment and Agreement to Be Bound" (Exhibit "A"), unless
21 otherwise agreed by the Designating Party or ordered by the court. Pages of
22 transcribed deposition testimony or exhibits to depositions that reveal Protected
23 Material may be separately bound by the court reporter and may not be disclosed
24 to anyone except as permitted under this Stipulated Protective Order; and

25 (i) any mediator or settlement officer, and their supporting personnel,
26 mutually agreed upon by any of the parties engaged in settlement discussions.

27 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
28 **PRODUCED IN OTHER LITIGATION**

1 If a Party is served with a subpoena or a court order issued in other litigation
2 that compels disclosure of any information or items designated in this Action as
3 “CONFIDENTIAL,” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification shall
5 include a copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to
7 issue in the other litigation that some or all of the material covered by the subpoena
8 or order is subject to this Protective Order. Such notification shall include a copy
9 of this Stipulated Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued
11 by the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order in the action in
13 which the subpoena or order was issued, the Party served with the subpoena or
14 court order shall not produce any information designated in this action as
15 “CONFIDENTIAL” before a determination by the court from which the subpoena
16 or order issued, unless the Party has obtained the Designating Party’s permission.
17 However, if the Designating Party has not obtained from a court a delay in the
18 production date, or an order to quash the subpoena, then the Party that received the
19 subpoena may comply so as to avoid failure to meet subpoena deadlines. The
20 Designating Party shall bear the burden and expense of seeking protection in that
21 court of its confidential material – and nothing in these provisions should be
22 construed as authorizing or encouraging a Receiving Party in this action to disobey
23 a lawful directive from another court.

24 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
25 **PRODUCED IN THIS LITIGATION**

26 (a) The terms of this Order are applicable to information produced by a Non-
27 Party in this Action and designated as “CONFIDENTIAL.” Such information
28 produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party
8 that some or all of the information requested is subject to a
9 confidentiality agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and
12 a reasonably specific description of the information requested; and

13 (3) make the information requested available for inspection by the
14 Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court within 14
16 days of receiving the notice and accompanying information, the Receiving Party
17 may produce the Non-Party's confidential information responsive to the discovery
18 request.

19 If the Non-Party timely seeks a protective order, the Receiving Party shall
20 not produce any information in its possession or control that is subject to the
21 confidentiality agreement with the Non-Party before a determination by the court.
22 Absent a court order to the contrary, the Non-Party shall bear the burden and
23 expense of seeking protection in this court of its Protected Material.

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform

1 the person or persons to whom unauthorized disclosures were made of all the terms
2 of this Order, and (d) request such person or persons to execute the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
4 A.

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
6 **OTHERWISE PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other
9 protection, the obligations of the Receiving Parties are those set forth in Federal
10 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
11 whatever procedure may be established in an e-discovery order that provides for
12 production without prior privilege review. Pursuant to Federal Rule of Evidence
13 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
14 of a communication or information covered by the attorney-client privilege or
15 work product protection, the parties may incorporate their agreement in the
16 stipulated protective order submitted to the court.

17 **12. MISCELLANEOUS**

18 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of
19 any person to seek its modification by the Court in the future.

20 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
21 Protective Order, no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground not addressed in
23 this Stipulated Protective Order. Similarly, no Party waives any right to object on
24 any ground to use in evidence of any of the material covered by this Protective
Order.

25 **12.3 Filing Protected Material.** A Party that seeks to file under seal any
26 Protected Material must comply with Local Civil Rule 79-5. Protected Material
27 may only be filed under seal pursuant to a court order authorizing the sealing of the
28 specific Protected Material at issue. If a Party’s request to file Protected Material

1 under seal is denied by the court, then the Receiving Party may file the information
2 in the public record unless otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

4 After the FINAL DISPOSITION of this Action, as defined in paragraph 2.8,
5 within 60 days of a written request by the Designating Party, each Receiving Party
6 must return all Protected Material to the Producing Party. As used in this
7 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. The Receiving Party must submit a written certification to the Producing
10 Party (and, if not the same person or entity, to the Designating Party) by the 60-day
11 deadline that (1) identifies (by category, where appropriate) all the Protected
12 Material that was returned and (2) affirms that the Receiving Party has not retained
13 any copies, abstracts, compilations, summaries or any other format reproducing or
14 capturing any of the Protected Material.

15 Notwithstanding this provision, Counsel are entitled to retain an archival
16 copy of all pleadings, discovery, motion papers, trial, deposition, and hearing
17 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
18 reports, attorney work product, and consultant and expert work product, even if
19 such materials contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Protective Order as set forth in
21 Section 4 (DURATION).

22 **14. VIOLATION**

23 Any violation of this Order may be punished by appropriate measures
24 including, without limitation, contempt proceedings and/or monetary sanctions.

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 DATED: September 4, 2024 LAW OFFICES OF DALE K. GALIPO

4
5 Bv: /s/Renee V. MASONGSONG

6 DALE K. GALIPO
7 RENEE V. MASONGSONG
8 Attorneys for Plaintiffs

9 DATED: September 4, 2024 CARPENTER, ROTHANS & DUMONT LLP

10
11 Bv: /s/ Scott J. Carpenter

12 STEVEN J. ROTHANS
13 SCOTT J. CARPENTER
14 Attorneys for Defendant, CITY OF SAN
15 BERNARDINO, a public entity

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22 ***IT IS SO ORDERED.***

23
24 Dated: _____, 2024 By: _____
25 HONORABLE SHASHI H. KEWALRAMANI
26 UNITED STATES MAGISTRATE JUDGE
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Central District of California on _____ in the case of Jose Alvarado,
et al. v. City of San Bernardino, et al. 5:24-cv-00088-JGB-SHK. I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____